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EXTRAORDINARY

PART II—Section 3

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No. 4] NEW DELHI, MONDAY, JANUARY 5, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 5th January, 1953

S.R.O. 36.—WHEREAS, the election of Moulvi Mokhtar Ali of Mouza Paka, Pathsala P.O., Kamrup District, Assam, as member of the Legislative Assembly of Assam, from the Barpeta-West constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Moulvi Abdul Rouf of Jogirpam Village, Mouza Howli (Ghilajhari), P.O. Howli, Kamrup District, Assam;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION NO. 87 OF 1952.

PRESENT:—Shri Ashutosh Dass, Retd. District Judge, (West Bengal), *Chairman*.

Shri Umakanta Gohain, Retd. Addl. Judge, (Assam), Shri U. N. Bezbaruah, Bar-at-Law, (Gauhati). } Members of the Election Tribunal, Assam.

Dated the 22nd December, 1952.

In the matter of an Election-Petition, made under Section 81 of the Representation of the People Act, 1951, in respect of Election of the Barpeta-West Constituency of the Assam Legislative Assembly, held in 1952;

Versus

In the matter of declaring void the election of the returned candidate in the said Election.

Abdul Rouf—*Petitioner.*

Versus

1. Makhtar Ali, B.A.,
2. Sadananda Das, B.L.,
3. Sanaram Choudhuri,
4. Madhusudan Das,
5. Syed Abdur Rouf, B.L.,
6. Rajani Kanta Choudhuri,—*Respondents.*

The petitioner -represented by:
Shri Pabitra Kumar Gupta, Advocate and
Shri J. N. Baruah, Pleader.

The respondent No. 1 —represented by:
Shri Bhabesh Ch. Baruah, Advocate.
Shri S. K. Ghose, Advocate,
Shri F. A. Ahamed, Bar.-at-law and others.

JUDGMENT

This petition relates to Election of the Barpeta-West Constituency of the Assam Legislative Assembly, held in the last General Election, 1952, in which the respondent No. 1, Shri Makhtar Ali was declared to have been elected. The petitioner was a duly nominated candidate, who since withdrew his candidature. The other candidates were respondents Nos. 2 to 6. It is an undisputed fact that the largest number of votes, obtained by the returned candidate, Shri Makhtar Ali came up to 10,025, the next highest poll having been secured by respondent No. 5 Shri Syed Abdul Rouf, being 6,343. This latter respondent appeared in the case to file a written-statement, supporting the case of the petitioner, but has not since made any appearance. Only the returned candidate has contested the election-petition, and no other respondent put in appearance in the case.

The petitioner has challenged the election of the returned candidate on the ground of his having resorted to the following major corrupt practices:—

(1) That the returned candidate having appointed himself as his Election Agent, had employed four Clerks, to wit two Clerks and two Clerks-*cum*-messengers, in connection with the Election, and had incurred expenditure on their account, which was done in contravention of Rule 118 of the Representation of the People (Conduct of Elections and Election-Petitions) Rules, 1951, hereafter referred to as the Rules that this was a major corrupt practice, falling under Section 123, Sub-section (7) of the R. P. Act, 1951.

(2) That the respondent published and distributed among the electors of the Constituency leaflets, exhorting them to vote for him in the said Election, and that the leaflets bore the names of three Gaunburahs of the names of Anwar Baksh, Ismail Uddin, and Abdul Basir, among others, as signatories. That these Gaonburahs were persons serving under the Government of Assam at the time. That, further, the respondent obtained the assistance of these Gaonburahs also in their canvassing for him, apart from, signing the aforesaid leaflets. That thus the respondent was found guilty of a major corrupt practice, as under Section 123, Sub-section (8) of the R.P. Act, 1951. In the above circumstance, the petitioner's prayer is that the Election of the respondent No. 1 be declared void.

In answer to the above, the respondent No. 1 pleaded in his written-statement as follows:—

With regard to the first of the grounds, taken by the petitioner, it was pleaded that the respondent had, indeed, employed six persons to carry on his work in connection with the Election. That there were as many as forty thousand voters in the Constituency to whom the respondent had to address a printed letter of request to vote for him. That to carry on the work, he actually employed only six persons, one, Dr. Syed Muhammed Ali being the principal man who managed the whole business generally throughout the whole Constituency, the five others filling in the printed letters, referred to above, and delivering the same to the electors. That as there were forty six Polling Stations fixed for the Constituency, the respondent was, in fact, entitled to employ under the Rule, about 50 persons as Clerks, Agents and Messengers, while he employed only six. That certain statements of the return of expenses submitted by him, relied upon by the petitioner in this connection, were mere misdescription made about the designations of the persons employed by him in connection with the work, which was done through inadvertance, and cannot, affect the case. About the second ground, taken by the petitioner, it was pleaded in his written-statement by the respondent that he had indeed issued a leaflet exhorting the voter to vote for him, as alleged by the petitioner, and, further, that the three persons, named, were indeed signatories to the document, but it was denied that these persons were Gauburahs or persons serving under the Government of Assam at the time, or that any of them canvassed for the respondent.

Issue framed, in the case, are as follows:—

1. Did the respondent No. 1 contravene the conditions of Rule 118 of the Representation of the People (Conduct of Elections and Election-Petitions) Rules, 1951, by employing persons for payment in connection with the Election, in excess of the prescribed number, as alleged in paras. 5-7 of the election-petition?

2. Were there signatories to the leaflets issued by respondent No. 1, who were persons serving under the Government of Assam as defined in Section 123(8), Explanation (b) of the R.P. Act, 1951?

3. To what relief, if any, is the petitioner entitled?

It may be noted here that issue No. 2, as framed, was not complete. There should have been added a sentence like this to this issue, namely, if so, may the respondent be held guilty of a corrupt practice, as under Section 123, Sub-section (8) of the R.P. Act, 1951? Indeed, this was the case, as understood by both the parties, which is clearly indicated by their pleadings, and we will consider the issue, as it stands thus amended, which was the obvious meaning of the issue as it had been framed.

We will first take up the above issue No. 2 for our consideration. Ext. 3 is proved on admission by the parties, as the leaflet in question. The fact that it was published by the respondent No. 1 is uncontroverted. That it was also circulated in the Constituency is virtually admitted. The respondent, in his written-statement, admitted that he had issued such a leaflet, by which it was obviously meant that it had been circulated in the Constituency at his instance. The fact of its circulation in the Constituency is also deposed to by some P.Ws. P.W 2, Maharath Choudhury said that the respondent had circulated this leaflet throughout the whole Constituency, and he further deposed that he found them widely posted all throughout the Constituency, and two copies of the same had come to his hand. P.W. 5, (the petitioner himself) also deposed to such circulation and he filed one copy of the same which came to his hand, and it has been marked Ext. 3 in the case. This leaflet contained an appeal to the voters of the Constituency to vote for the respondent No. 1, setting forth the considerations which should weigh with the voters in doing this. It is worth-while to reproduce here the concluding portion of the document, rendered in English, and it is this:—

> "Our earnest request to the public is that having deeply considered what we have stated above, you will please endorse our views and cast your votes in favour of Mlv. Mukhtar Ali by putting your ballot-paper into the box marked with the symbol ladder. May the wishes of the public bear fruit ... "

Now, about the three signatories to the document, Adbul Basir is to be left out of account as, according to the petitioner's evidence, he had ceased to be a Gaonburah before the relevant time. The names of the two other signatories as appear in the document are: —

1. Anar Baksh Gaonburah, of Jahurpam,
2. Ismail Uddin Gaonburah, of Jaypur.

The register of Gaonburahs maintained under paragraph 164 of Part VI of the Assam Land Revenue Manual, Vol. I was called for at the instance of the petitioner, from the Sub-Divisional Officer, Barpeta, and P.W. 2, an assistant of this S.D.O's office, produced the register. He proves that this was the up-to-date register, and we see no reason at all to discredit his testimony, though nowhere in the register, the witness could point out any note to the effect that the register related, in fact, to the year 1951-52, curiously enough, however, in the certified copies of the relevant entries from this register, which have been put in evidence by the petitioner and marked Exts. 2 and 2(a), there is a note at the top that the register related to the year 1951-52. Notwithstanding this, we feel no hesitation in accepting the evidence of P.W. 2 that the register produced, out of which the above copies were supplied, was, indeed, the up-to-date register. It may be noted, in this connection that at the instance of the petitioner the register, beginning from December, 1951, was called for from the S.D.O., and it cannot for a moment be doubted that the up to-date register had, in fact, been produced. The adverse comment, made on behalf of the respondent on this account, cannot, therefore, be given any weight. From the evidence of the register, we find that at the relevant time one, Munshi Anwar Baksh of Jahurpam, Mouza-Ghilajari (*vide* Ext. 2a) continued to be the Gaonburah of his own village, namely, Jahurpam, having been appointed to this office in 1934. The fact that entries about the revenue-remission are not made in the register after 1941-42, upon which also comment was made on behalf of the respondent, appears to be

of no consequence, as P.W. 2, Bishnu Prasad Das explains that such entries are often left to be made through mistake, which really appears probable. The other document, Ext. 2, shows that one, Ismail Sekh of Village Ghilajari, Mouza Ghilajari, continued to be a Gaonburah of his village till the relevant time, he having been appointed to the office in 1940. In this case also, there is no entry of revenue-remission after 1941-42.

The next pertinent point, urged on behalf of the respondent, is whether these persons, whose names we find from the register of Gaonburahs, are proved as identical with those whose names appear in the afore-said leaf-lets as signatories. About Anwar Baksh, there can be no doubt as the description of the name and the village in the two documents fully agree, and it would be sufficient for the petitioner to prove such identity in one such single case, in order to succeed in his plea. About the other person too, however, we are satisfied from the evidence, about his identity. The name Ismail Uddin appears to have been abbreviated in the register as Ismail. In the leaf-let, the village of residence of the man is described as Joipur, while in the register the name of the village appears as Ghilajari, within the Mouza of the same name. But this discrepancy is reconciled by the evidence of P.W. 3 who states that the village of Ismail Gaonburah is known as Joipur Ghilajari, and we find no reason to discredit his testimony. Indeed, in the respondent's petition, dated 19th November 1952, in which he cited some witnesses and asked for summons on them, the name of one witness, who must have been no other than one of the signatories to the leaf-let, was described as Ismail Gaonburah, and his village was, further, described as Joipur Ghilajari, which fully supports the above evidence of P.W. 3. It may be observed, in this connection, that the respondent cited in his above petition, apparently, the two signatories to the leaf-let, referred to above, as witnesses and took out summons on them, but they were not examined to disprove the petitioner's case of the afore-said signatories being really identical with the Gaonburahs of the villages. In answer to this, it was contended on behalf of the respondent that this being an enquiry about some alleged corrupt practices under the Law of Election, it is one of a quasi-criminal character, and there was, therefore, absolutely no obligation on the respondent, who was in the position of an accused to produce any evidence. This view of Law does not appear to us to be correct. Indeed, the enquiry being of a quasi-criminal character, rigid proof is to be demanded of the person bringing the charge to prove his case beyond all reasonable doubt, but that does not fully exonerate the person, charged with such corrupt practice, from producing evidence, specially the one in proof of a fact within his special knowledge as he is bound to do under the provision of Section 106 of the Indian Evidence Act, and there is really a case like that here. It is further to be borne in mind that an enquiry such as this, though held to be of a quasi-criminal character, cannot be said fully of a criminal nature, in which latter case alone, no evidence may be required of the accused. Thus the respondent's omission to examine Anwar Baksh and Ismail Sekh, the two signatories to the leaf-lets, whom he had cited as his witnesses, weighs with us further in accepting the petitioner's evidence of identity of the persons signing the leaf-lets with those whose names appear in the register of the Gaonburahs, as holding this office at the relevent time.

Thus we find that the two persons, holding the office of the Gaonburahs under the Government of Assam, at the relevant time, were signatories to the afore-said leaflet, which had been issued and circulated in the Constituency by the respondent No. 1.

The next point, as urged on behalf of the respondent, is that, such an office of a Gaonburah, does not fall under the purview of Sub-section (8) of Section 123 of the R.P. Act. This contention does not bear the least scrutiny. In Explanation (b) under the Sub-section, a village head-man or any other village Officer, by whatever name he is called, falls under the purview of the Sub-section. Paragraphs 160—167 of Part VI of the Assam Land Revenue Manual Vol. I deal with the position of a Gaonburah, his duties and the services he has to render to the Govt. of Assam, and the consideration, he is to receive for such services, and the other allied matters. The provisions would clearly show that a Gaonburah is really a village head-man employed by the Govt. of Assam, for performing some public duties, and is a person serving under the Government and that for consideration, received in the shape of revenue-remission for some land held by him. In paragraph 160, a Gaonburah is used as synonymous with a village head-man. Paragraph 164 provides that his position is that of the elder and representative of the village. There-after, in the same paragraph his duties are described. After observing that he is expected to be the mouth-piece of the people amongst whom he lives and their leader in carrying out the works for their common benefit, the paragraph provides that his duty is to assist the "Maujadar" in the collection of land-revenue and the "Mandal" in the annual correction of the village-maps and records and in the maintenance of the survey-marks. Other duties, imposed on him, including the ones in

respect of criminal matters, are then set out in the paragraph. Paragraph 165 provided that he is to be granted an annual remission of land-revenue up to 20 bighas of cultivated land of the best quality, included in his patta. From all these, there can be no manner of doubt that the office of a Gaonburah falls within the purview of Section 123, Sub-section (8) of the R.P. Act, 1951. He does indeed appear to be a person carrying considerable influence in the area in respect of which he holds the office, and is clearly a person serving under the Government of the State, as contemplated by the afore-said Sub-section of Section 123.

We were next referred to the Assam Act XIII of 1950, on behalf of the respondent. This was only an enactment enabling a Gaonburah, though a Government servant to stand as a candidate for Election, and has no bearing on the issue.

Now, from the afore-said leaflet, as already noticed, we find an appeal made to the voters by its signatories, including the two Gaonburahas, to vote for the respondent. This leaflet, as already found, was issued and circulated by the respondent. These facts alone would be sufficient to bring the case within the mischief of Section 123, Sub section (8), it being found therefrom that the respondent No. 1 obtained assistance from persons serving under the Government of the State of Assam, for the furtherance of his prospect at the election. It need not further have been proved by the petitioner that these Gaonburahs or any of them further canvassed for the respondent, of which some oral evidence has been furnished here. We will not go into the question at all, as there had been no specific issue about this alleged canvessing.

Another point contended on behalf of the respondent may here be lastly referred to. It is argued that there were only at best only two Gaonburahs, among a total number of 50 signatories to the leaflet, and the influence that may have been exercised by these Gaonburahs in being signatories to the appeal, may be little. This is not at all a pertinent point. The point is whether assistance of some Government servants, whatever be their number, had been obtained for the furtherance of the respondent's prospect at the Election, and this being found in the affirmative, it would be sufficient to make out a case of major corrupt practice.

We accordingly answer the issue No. 2 against the respondent.

Issue No. 1. After our finding on the Issue No. 2, it is not, indeed, necessary for us further to go into this issue, because our decision on issue No. 2, would decide the whole case in favour of the petitioner. Yet, we proceed to record our decision on this point also.

It appears that under Schedule VI to Rule 118, only the following four persons may be employed for payment by the candidates in connection with the election, namely, one Election Agent, one Counting Agent, one Clerk and one Messenger, and this when the number of voters of the Constituency does not exceed 75,000 here admittedly the number being 40,000 only. Then, as appears from the Rule, some Polling Agents and some more Messengers may further be employed, but this obviously for work at the Polling Stations and only for the days of poll. Here, therefore, the fact that there may have been as many as forty six Polling Stations for the Constituency, will be of no consequence.

Now, from the evidence as we have before us, it does, as a matter of fact, appear that the respondent contravened the provision of Rule 118 by employing for payment persons in excess of the number permissible.

Ext. 1 is the return of election-expenses, submitted by the respondent, together with the vouchers. It appears from this return that two persons, described as Clerks (Mofizuddin & Bahadur Ali), two persons, described as Messengers (Daraj Ali & Sunaur Rahman) and, lastly, two more persons, described as both Clerks and Messengers (Fazlur Rahman & Syed Muhammed Ali), had been employed by the respondent, who had, again appointed himself as his Election Agent, and, as such, was to keep the account of the election expenses himself. All these six persons are further found to have been employed for periods over a month and that too at a monthly salary. Now, the respondent's explanation is that only Bahadur Ali was employed as the clerk and though Mofizuddin is described in the return also as a Clerk, that was a mere misdescription and that he was really appointed a Polling Agent, and Ext. 1 is put in to show this. We cannot accept this explanation. This man appears really to have been appointed, on 14th January 1952 as Polling Agent for a certain Centre for the day of poll, but that he had been working as a Clerk from before, and for over a month, appears from the above entries of the return of expenses, and that the above entry was rally correct, is further shown by the voucher No. 9 enclosed with

the return of expenses, where Mofizuddin in granting this receipt for the payment, clearly described himself as functioning as a Clerk, and that, from 3rd December 1951 to 20th January 1952. There were other instances of contravention of the above Rule by the respondent in as much as two persons, described as Messengers, had been employed by him, and that for periods, exceeding a month in each case, while under the Rule, he could employ one such person only, except for additional hands for the Polling Centres for the day of poll. Then, also two other persons were employed by the respondent and described as both Clerks and Messengers. They are to be regarded either as Clerks or messengers, and in either case, the respondent exceeded the authorised number of employees. In his written-statement, the respondent described one of these latter *viz*, Muhammed Ali being his principal worker who looked after the whole business, and he may hardly be called a Messenger. Further, in the written-statement, the respondent stated that all the other five persons had done work of a clerical nature for him, in that they had to fill in the large number of printed letters that had been addressed to the voters by the respondent. From all these facts, we find that the respondent had, in fact, contravened the provision of Rule 118 in employing Clerks and Messengers in excess of the prescribed limit, and this was a major corrupt practice which falls under Section 123, Sub-section (7) of the R. P. Act, 1951.

It was urged on his behalf, however, that this is an irregularity which is, more or less, of a technical nature, not materially affecting the Election, which may be condoned by the Tribunal. That this is a suitable case for such condonation, as there was really no bad faith on the part of the respondent in employing such persons, in excess of the prescribed number. That this was done really under some mis-apprehension of the Statutory Rule on the subject. In support of the above contention, we were referred to Halsbury's "Laws of England," Vol 12, page 373 dealing with the subject of "authorised exceses and exceptions" in connection with illegal payment and illegal employment in the conduct of an Election. We were further referred to the second of such authorised excuses, which is dealt with at page 375 of the Volume. With regard to this, it may first be noticed that these observations were made by the Author with reference to the provisions of the Corrupt and Illegal Practices Prevention Act, 1883 (an English Statute), which has not been placed before us, and we do not know what the provisions of the Act actually are. Here, in our Statute, all such contraventions of the rule have been expressly forbidden, and there appears no ambiguity in the meaning of the rule as made, and further, the principle is to be borne in mind that ignorance of law is not a valid excuse. Further, in Halsbury, it was laid down that in order to bring a case within the scope of the second of the authorised excuses, some pre-requisites are to be looked into, namely, that the act, complained of, "arose from inadvertance, the party not being aware of what was done or not knowing that it was wrong, or from some other reasonable excuses of a like nature, and in any case it did not arise from any want of good faith"; and, then, further before such a practice is condoned, the Court has give notice of such an application of the condonation to the electorate concerned. As we have already observed the English Statute with reference to which, these observations were made, is not before us and, we do not know what its actual provisions are. As for the Indian Statute, the Statutery Rule on the subject limiting the number of persons that a candidate may employ in connection with the Election, was obviously made with a purpose, and the Statute definitely provides that violation of the Rule is to be penalised. Further, as already observed, there appears to be no ambiguity in the provisions contained in this Rule, and an ignorance of law cannot be set up as a valid excuse. From all these, we hold that the above contravention of the Rule is not one which, under the Indian Statute, the Tribunal is competent to condone, and, further, there is found no sufficient ground for doing so.

The two other reported Indian cases, relied upon by the respondent on the point, namely, (1) the election-petition of Lyallpur and Jhang General Constituency, reported in the 'Indian Election Cases" by Sen and Poddar at page 504; (2) the election-petition of Bulandshar District M.R. Constituency, reported at page 243 of the same Volume—have, in fact, no bearing on the present case before us, the facts of both the cases being totally different.

We accordingly find the issue No. 1 also against the respondent, and hold that respondent No. 1 was guilty of a major corrupt practice, as under Section 123, Sub-section (7) of the R P. Act, 1951, also.

Issue No. 3. In view of our above findings, the election of the respondent No. 1 is to be declared void.

It appears, however, that inadvertantly notice has not been issued upon the respondent No 1 and his accessories in respect of the above corrupt practices, calling upon them to show cause why they should not be named as having been guilty of these corrupt practices, as required under proviso (a) of Section 99, Sub-section (I) of the R. P. Act, 1951, and in the circumstances of the case, we do not consider it expedient to pursue the matter further.

About cost as the petitioner, as an elector, made the petition to obtain a declaration that the election of the respondent No. 1 was vitiated by reason of his resorting to some major corrupt practices, which case he has succeeded in establishing, the petitioner should get his cost from the respondent No. 1, which is assessed as per schedule below.

ORDER

The election of respondent No. 1, Shri Mukhtar Ali from the Barpeta-West Constituency of the Assam Legislative Assembly is declared void. He shall pay the petitioner Rs. 103-2-0 as cost of the case, as per schedule below:—

Schedule of Cost

1. Pleaders' fee	...	Rs. 50/-/-
Vakalatnama	...	Rs. 4/-/-
Witnesses' expenses	...	Rs. 49/2/-
Total	...	Rs. 103/2/-

(Rupees one hundred three and annas two only.)

(Sd.) U. N. BEZHARUAH.
(Sd.) U. K. GOHAIN.

Members,
22-12-52.

(Sd.) A. DAS,
Chairman,
22-12-52.

S.R.O. 37.—Whereas the election of Shri U. Krishna Rao, as a member of the Legislative Assembly of Madras from the Harbour constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri T. Prakasam of Government House Estate, Mount Road, Madras;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, MADRAS

Wednesday the 24th day of December 1952

PRESENT:—Sri K. K. Venkatachala Ayyar.—*Chairman.*

Sri Syed Imamuddin and Sri K. Chandrasekharan—*Members.*

ELECTION PETITION No. 144/1952

Sri T. Prakasam—*Petitioner.*

Versus

Dr. U. Krishna Rao and others.—*Respondents.*

This petition coming on for hearing on the 9th, 10th, 12th, 13th and 15th days of December 1952 in the presence of Messrs. D. Narasaraju, Venugopalachari and K. B. Krishnamurthi, Advocates for the petitioner, Messrs. V. T. Rangaswami Ayyangar and R. Santhanam, Advocates for Respondent 1 and Mr. P. Satyanarayana Raju, Government Pleader for Respondent 2 and upon reading the peti-

tion and statements of respondents and upon considering the evidence and the arguments on both sides and the petition having stood over for orders till this day, the Tribunal delivered the following order:—

Issues

1. Whether the condonation of a day's delay by the Election Commission is invalid for want of notice to respondents?
2. Whether there was no valid cause for condoning the delay?
3. Whether this Tribunal has jurisdiction to overrule the discretion exercised by the Election Commission in condoning the delay?
4. Whether the Election Commission had no jurisdiction to call for a list of particulars?
5. Whether the petition is barred by limitation?
6. Whether the allegations in the petition are sufficient to bring this case within section 100(1) and (2) of Act XLIII of 1951?
7. Whether alleged corrupt practices are true?
8. Whether there was non-compliance with the rules as alleged in the petition?
9. Whether the Election is void and liable to be set aside?

ORDER

Issue 7.—The petitioner Sri T. Prakasam was one of the candidates for election to the Madras Legislative Assembly from the Madras City Harbour Constituency. Respondents 1 and 3 to 9 were the other candidates. The second respondent who is the Commissioner of the Corporation of Madras, was the Returning Officer. Polling took place on 16th January 1952 and the counting of votes on the 18th. As a result of the poll, the first respondent was declared elected, he having secured 21,314 votes, while the petitioner obtained only 7,207 votes. The relief claimed by the petitioner in this petition is "that the whole of the election must be declared void in public interests". By a subsequent amendment he has claimed an alternate relief, namely a declaration that the election of the first respondent, Dr. U. Krishna Rao, the successful candidate—is void.

2. The allegations on which the above reliefs are claimed, fell under two heads, namely, corrupt practices and contravention of the rules relating to the conduct of elections. It will be convenient to deal with these allegations in the order in which they find a place in the list annexed to the petition.

3. *Paragraph* (1) of the list of corrupt and illegal practices relates to contravention of rules and will be dealt with when considering other allegations of a similar nature.

4. *Paragraph* (2).—No evidence was adduced to prove the allegation made in this paragraph, *viz.* that without the requisite authorisation, the President of the Tamil Nad Congress Committee was allowed to remain inside the polling stations in order to induce the voters to vote in favour of the first respondent. This remark applies also to similar allegations made in paragraph 2(c) against the same person, namely, the President of the Tamil Nad Congress Committee.

5. *Paragraph* 2(*a*).—Mahaboob Bi (R.W. 2) was the polling agent of the first respondent in polling station No. 34, which was located in the Madras Collector's Office. It is alleged "that she remained inside the polling booth from 8 A.M. to 11-50 A.M. without any authorisation. She was reported to have been conversing in Urdu with the female voters. The presiding officer or his assistants being ignorant of Urdu, it is said, could not understand what she was speaking to those female voters in Urdu." The evidence for the petitioner to prove these allegations is that of Sri Kondapi (P.W. 1) who was his election agent. Lt. Col. Sastry (P.W. 5) who was a relieving polling agent for the petitioner, also referred to this matter in his evidence; but he did not say that to his knowledge she interfered with the voters. All that he deposed to was that he heard that there was some irregularity in the polling booth and he brought it to the notice of the presiding officer who after enquiry told him that a Muslim lady was inside the polling booth unauthorisedly. Turning to the evidence of P.W. 1, that also does not establish that there was interference with the voters. He deposed that when he went into the polling booth he saw Mahaboob Bi talking to two or three Muslim lady voters in Urdu, and he not being conversant with Urdu, could not have understood what she was talking about. But he did not say that she was interfering with the voters in the exercise of their electoral right or that she was

inducing the voters to vote for the first respondent. It is significant that in Ex. B, the complaint made by P.W. 1 to the Returning Officer, what is alleged is that the conversation with the voters in Urdu was "suspected to amount to influencing the voters". It is needless to remark that mere suspicion will not help the petitioner. Mahaboob Bi was examined as R.W. 2 and she denied having interfered with the voters. This is all the evidence in support of the alleged interference with the voters. This evidence is wholly insufficient to establish the allegation.

6. But it has to be observed that Mahaboob Bi did not admittedly deliver the letter of appointment as polling agent for the first respondent to the presiding officer till 11-50 A.M. Under rule 12(3) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 the polling agent, on the date fixed for the poll shall present the duplicate copy of the letter of appointment to and sign the declaration contained therein before the presiding officer of the polling station and it further provides that "no polling agent shall be allowed to perform any duty at the polling station or at the place fixed for the poll unless he has complied with the provisions of this sub rule". According to the evidence of Mahaboob Bi she tendered the letter of appointment to the presiding officer before the commencement of the poll but he did not then receive it as he was very busy and said that he would take it later This explanation does not seem to be acceptable in view of Ex. A and Ex. VIII. P.W. 1 complained to the presiding officer that she was in the polling booth without proper authorisation. Ex. A is the statement given by the presiding officer to P.W. 1 in answer to this complaint and Ex. VIII is the report sent by the former to the Returning Officer. From these, it is seen that the declaration in the form of appointment of polling agent had not been signed by Mahaboob Bi till the matter was brought to the notice of the presiding officer by P.W. 1. This will not, however, amount to a corrupt practice. At best it would amount to non-compliance with the provisions of the rules made under the Act within the meaning of section 100(2)(c) of the Act XLIII of 1951. We shall deal with the effect of such non-compliance later.

7. *Paragraph* 2(b).—In this paragraph it is stated that Srimathi Kuttimalu Amma, wife of Sri K. Madhava Menon, "got unauthorised access into the ladies polling booths to influence the women voters and there within the polling booth she canvassed that they should not vote for the petitioner and that they should vote for the first respondent". According to the evidence of P.Ws. 3 and 4, they went to the Muthialpet High School which was a polling station and while there, they saw Mrs. Madhava Menon accompanied by two girls going into the polling booth. As they did not come out for some time, P.W. 4 asked P.W. 3 to find out what they are doing because he suspected that they might interfere with the voters. The latter went into the polling booth and told the petitioner's polling agent that he should be careful lest she should interfere with the voters. But the polling agent said that he could not do anything as he would not be permitted to go into the polling booth reserved for women voters. After sometime Mrs. Madhava Menon and the two girls went away. P.W. 3, however, added that Mrs Madhava Menon was standing near the polling station and asking the voters to take tickets from the Congress Office and that, he therefore, inferred that she was canvassing for the first respondent, who was a Congress candidate. In this office slips of paper bearing the electoral roll numbers of voters, (described by this witness as tickets) were given to the voters who went there. In cross-examination, however, he stated that it was while standing near the Congress Office that Mrs. Madhava Menon asked voters to go to that office and get tickets. It was admitted that for this election the candidates set up offices beyond 100 yards of polling stations for the purpose of giving such tickets to voters. Merely directing a voter to the Congress Office and asking him to get a ticket bearing his electoral roll number cannot be characterised as interference with the voters.

8. *Paragraph* 2(d).—It is alleged in this paragraph that "a Government official was seen providing conveyance to voters in the George Town area. He was also seen, besides providing conveyance, influencing the voters to vote in favour of the first respondent and this fact would be testified by Mr. A. K. Pillai of George Town, Madras." No witness by the name of A. K. Pillai was examined. But one Sri M. Palaniappa Pillai, (P.W. 6) who was assisting the petitioner in the election, deposed to having seen a Deputy Secretary to Government in the Development Department bringing voters in his car 8 or 9 times and leaving them at a distance from the polling station in the Coral Merchant Street. Though the allegation in the petition relates only to a *Government servant*, this witness also deposed to having seen voters being similarly brought in a car belonging to one Somasekara Rao, Manager of an Insurance Company. This is not alleged in the petition It is, however, unnecessary to deal with the evidence of this witness

in detail. For the first respondent an application was made to summon the Deputy Secretary to Government in the Development Department in order to disprove the evidence of this witness. It was then stated by Sri C. Venugopalachari, who represented the petitioner's counsel that the evidence given by the witness was a mistake and that the Deputy Secretary to Government in the Development Department was not guilty of any such conduct. He no doubt stated that the person concerned was some other officer of whom no mention has been made in the petition, nor was it referred to by the witness. The evidence of this witness has, therefore, to be rejected.

9. The remaining allegations relating to corrupt practices are in paragraph 2(e) which runs as follows:—"Mr. U. Umapathy of the Uma Printers and a good friend of Dr. U. Krishna Rao, behaved in an unruly manner towards those people who had come to vote for the petitioner. The matter was immediately reported to the police. The then Inspector of Police of the Flower Bazaar Station tried to disallow Mr. Umapathy from interfering with the voters. But Mr. Umapathy avoided even the police inspector's admonitions and continued his nefarious activities all through the day till the polling was over. He even got unauthorised access into the polling station in Thatha Muthiappan Street and illegally put in a footrule into the ballot boxes through the slit to observe the voting strength and the poor presiding officer connived at this". The last sentence of this paragraph does not deserve even a passing notice because no evidence was adduced to prove the insertion of a foot-rule into the ballot boxes. The witnesses examined to prove the alleged unruly behaviour are Sri Kondapi (P.W. 1) Sri Ramakrishna Tilak (P.W. 2) and Lt. Col. T. S. Sastry, (P.W. 5). So far as P.W. 1 is concerned, he has no personal knowledge of the occurrence. Shri Umapathi Mudaliar has been examined and he is R.W. 1. He denied having created any disturbance on the election day. He deposed that he did not even go to the polling station on the 16th but remained in his office throughout the day, engaged in giving tickets to voters. There is, however, a material difference in the evidence for the petitioner. According to the evidence of P.Ws. 1 and 2, Sri Umapathi Mudaliar created the disturbance in the polling station in Thatha Muthiappan Street, while the evidence of P.W. 5 is that it took place in front of the polling station in Mint Street. As a matter of fact there was no polling station in Thatha Muthiappan Street. This is clear from Ex. II. The evidence of P.W. 5 is that when he went to Mint Street, he found a large number of people near the polling station obstructing the traffic. He also saw a person whose name he subsequently learnt to be Sri Umapathi Mudaliar pushing people about and using violent language. The place where this took place was on the main road at a distance of about 25 yards from the polling station. He reported to the police officer on duty and he took away Umapathi Mudaliar. He further deposed that when he visited the polling station again at about 4 P.M. he saw Umapathi Mudaliar loitering on the road and a police officer was after him asking him to go away. He also deposed that it was evident to him that he was working for the first respondent. He admitted in cross-examination that he did not speak to other agents about interference with the voters by Umapathi Mudaliar. He did not also give any written complaint to the police. It is only P.W. 2 who deposed that he saw Umapathi Mudaliar scaring away the voters with a threatening look and asking them to vote for the first respondent and not to vote for the petitioner. He was not able to give the name of even a single voter who was interfered with by Umapathi Mudaliar. If really R.W. 1 behaved in an unruly manner, it may be that he was guilty of an election offence. But on the testimony of P.W. 2 which in this respect is not supported by P.W. 5, it is not possible to hold that he interfered with the voters in the sense that he either canvassed for votes or exercised undue influence.

10. Thus none of the corrupt practices alleged in the list of corrupt practices appended to the petition, is proved.

11. We may observe here that there are 7 enclosures to the petition of which enclosures 5 to 7 are copies of reports sent to the petitioner or to P.W. 1 his election agent by some of the polling agents. They contain some more allegations of corrupt practices. But they do not find a place in the list furnished under section 83(2) of the Representation of the People Act, 1951. We find this issue against the petitioner.

Issue 8:—

12. Non-observance of rules are alleged in the petition under two heads—(1) non-observance on the election day (2) non-observance with regard to counting of votes. As regards the first, though it is alleged in paragraph (1) of the list of corrupt and illegal practices that "the presiding officers in most stations did not allow the petitioner's polling agents to affix their seals at the commencement of the poll as well as at the close of the poll, in spite of the fact that they wanted to

affix their seals", the evidence adduced relates only to two polling stations, *viz.* Nos. 50 and 52. The witnesses who speak to it are P.Ws. 7 to 10, who were the polling agents of the petitioner. There is also the evidence of P.W. 1 who on receipt of complaints from P.Ws. 7 to 10 went to the polling stations and made representations to the presiding officers. The presiding officers in those polling stations were examined, and they are R.Ws. 4 and 5. Ex. B1. is a complaint in regard to the same matter lodged by P.W. 1 with the Returning Officer on 17th January, a day after the poll. We do not attach much importance to Exs. IX and X, which were produced to show that P.Ws. 9 and 10 were not the petitioner's polling agents for polling booth No. 50. It is seen from Ex. IX and X that two persons Sri K. Bramaiah and Miss P. Chandra were appointed polling agents for that station. The form of appointment both for polling agents and relieving agents is the same and it is possible that the persons named in Exs. IX and X were only relieving agents. We are not, therefore, prepared to say that P.Ws. 9 and 10 were not the polling agents of the petitioner at the polling station No. 50. From the evidence of these witnesses, it is clear that there was no room for complaint except in regard to one matter, namely, that the presiding officers did not allow the polling agents to affix their seals on the top of the polling boxes either at the commencement or at the close of the poll. They admit that the polling boxes with the symbols pasted inside and outside were shown to them and signatures of the polling agents present were obtained on the paper seals. P.W. 7 and 8 also admitted that in their presence the paper seal was inserted, the window was closed and secured by a seal and the slit for inserting ballot papers was alone kept open and sealed. In the evening after the close of poll, the boxes were shown to them and the slits were closed by pulling the knobs together. Allwyn type of boxes were used in this constituency and in this type of boxes if the slit is closed the boxes cannot be opened without tearing the paper seal. The complaint of the petitioner is that his agents were not permitted to affix their seals and it was admitted by R.Ws. 4 and 5 that the seals of the agents were not affixed on the top of the boxes. But having regard to Rules 21 and 32 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, this objection has no force. Rule 21(3) provides: "Where it is necessary to use a paper seal for securing the ballot box, the presiding officer shall thereafter fix in the space meant therefor in each such box a paper seal provided for the purpose. He shall also affix on such paper seal his own signature or seal and obtain thereon the signature or seals of such candidates or of such election or polling agents of the candidates as may be present and may desire to affix such signatures or seals. He shall then secure and seal each box in their presence in such manner that the slit in the box for insertion of ballot papers therein remains open. This rule is applicable to cases in which the Allwyn type of boxes are used as in this case. Sub-rule (4) which provides for sealing by the candidates or their election or polling agents who may be present, applies only to cases in which the paper seal is not used for securing a ballot box. Rule 32 deals with the procedure to be followed at the close of the poll. This rule also does not contemplate affixture of seals by the candidates or their polling agents on the ballot boxes at the close of poll. For the petitioner reference was made to rule 46(i)(iii) which runs as follows:—"The Returning Officer shall then allow the candidates and their election and counting agents present at the counting, an opportunity to inspect the ballot boxes and their seals for satisfying themselves that they are in order". It was argued on behalf of the petitioner that the expression 'their seals' means the seals of the candidates or their agents. The procedure to be followed in regard to sealing is laid down in rules 21 and 32, while rule 46(1)(iii) deals with the procedure to be followed at the counting of votes. There is no doubt that the expression 'their seals' in Rule 46(1)(iii) refers to the seals on the boxes and not the seals of the election agents.

13. It is necessary to observe that P.Ws. 9 and 10 further deposed that the presiding officer of polling station No. 50 did not affix his seal in their presence but asked them to go away saying that they could not be permitted to be present when he affixed his seal. No such allegation has been made either in the petition or in the list annexed thereto. Even in the complaint, Ex. B.1, lodged by P.W. 1 with the Returning Officer on the 17th, there is no allegation that the petitioner's polling agents in polling station No. 50 were not allowed to be present when the boxes were sealed by the presiding officer. In the circumstances, we see no reason to accept the evidence of P.Ws. 9 and 10 in preference to that of R.W. 4. On the whole we are of opinion that there is no substance in this complaint regarding failure to allow the petitioner's polling agents to affix their seals on the ballot boxes.

14. Dealing next with the alleged irregularities on the counting day, in paragraph 4 of the petition, there is an allegation that "the ballot boxes were kept in open verandahs for about 36 hours even after protest". According to the evidence of P.W. 1 and P.W. 11, who was the counting agent of the petitioner, they saw on the 17th of January boxes heaped up in the verandahs of the Victoria Public

Hall and the verandahs were unprotected. It may be mentioned that the Victoria Public Hall was selected some days before the polling day as the place for counting of votes and notice of the same was given to the candidates. According to the evidence of the Returning Officer (R.W. 3) this selection was made with the approval of the Election Commission. It is also his evidence that the building was taken on lease for the specific purpose of the election. R.W. 3 held a conference with the police officers concerned in regard to the safe custody of the boxes. In accordance with their advice, the verandahs on two sides of the Victoria Public Hall were enclosed by expanded metal fixed to wooden frames in such a manner that it was not possible to gain entrance from outside. In the City of Madras, elections in five constituencies, *viz*, the City Parliamentary Constituency which consists of four Legislative Assembly Constituencies, of which the Harbour Constituency is one, took place on the same date, *viz*. 16th of January. R.W. 3 was the Returning Officer for all these constituencies. The total number of ballot boxes received was 12,521 of which 1,251 related to the Harbour Constituency. Receipt of ballot boxes occupied the whole of the night of the 16th. On the 17th ballot boxes relating to three Assembly Constituencies, including the Harbour Constituency were arranged and kept within the hall itself, as the counting of votes in regard to this Constituency had been fixed for the next day. After the boxes were arranged, all the doors in the hall were closed and secured from inside except one on the eastern side and this door on the eastern side was locked and sealed. The key of the lock was put in a sealed cover and handed over to the police sergeant on duty. The building was also guarded by the police. Admission to the building was regulated by permits. When the boxes were received and arranged no one was allowed to enter unless he had a permit. These facts are deposed to by R.W. 3. Whether P.Ws. 1 and 11 complained to R.W. 3 that the ballot boxes were left uncared for in the verandah is a point in dispute. According to R.W. 3, both P.Ws.1 and 11 went to his residence on the night of the 16th and asked his permission to sleep inside the hall, and this he refused to give. The evidence of P.Ws. 1 and 11 that on the 17th they complained to R.W. 3 about the ballot boxes being kept in the verandah is denied. However, it is not disputed that some ballot boxes were kept in the verandah which for ensuring safety had been completely enclosed by expanded metal fixed to wooden frames. We are concerned only with the election in the Harbour Constituency and according to the evidence of R.W. 3 all the ballot boxes used in this Constituency were kept inside the hall which was locked and sealed. This evidence is not really contradicted by P.Ws. 1 and 11 who did not say that the ballot boxes which they found in the verandah were the boxes used in this constituency. Under Rule 34 the Returning Officer has to make adequate arrangements for the safe transport of all ballot boxes and for their safe custody until the commencement of the counting of votes. This is a matter in regard to which he has to use his own discretion and the measures adopted should be such as to be reasonably sufficient for the safe custody of the boxes. From the evidence of R.W. 3, we are satisfied that the steps taken by him in this regard were such as were reasonably sufficient for the safe custody of the polling boxes.

15. In the petition reference is also made to a statement said to have been published in the papers that it was demonstrated before the election officers that some of the ballot boxes could be opened without damaging the paper seal by a mere finger trick. Though not strictly relevant, we think it better to deal with this. There is no evidence to prove that there was such a demonstration. But at the conclusion of the trial, Sri K. B. Krishnamorthy, learned Counsel for the petitioner, stated that he could demonstrate that such a thing is possible. An Allwyn type of ballot box had been produced before us—(marked as M.O.1). With the aid of his fingers he was able to push the paper seal inside the box, so that when it was opened the paper seal was not cut. On the other side it was stated that the catch in that box had become loose on account of constant use and it would not be possible to open a new box without cutting the paper seal. Accordingly, a new box—(M.O. 2) was produced, and, though Sri Krishnamorthy attempted to push down the paper seal he was not successful. That his attempt was successful in the case of one box is at any rate an indication that the catch for holding the paper seal could become loose by frequent use. A stronger and more satisfactory mechanism is required to hold the paper seal. That is a matter for the election authorities to consider.

16. We now proceed to consider the alleged irregularities and non-compliance with rules on the part of the Returning Officer in the matter of counting of votes. On this matter, we have on one side the evidence of P.Ws. 1, 11 and 12 and on the other the evidence of the Returning Officer (R.W. 3). According to R.W. 3 the procedure he followed was as follows:—The ballot boxes were arranged in two rows. The boxes of each candidate which were 139 in number were so arranged that the tops, with the seals thereon were visible for inspection. At 8 A.M. on the 18th, the candidates and their counting agents, with the exception of the petitioner,

were present, and they were allowed to inspect the boxes and the seals thereon and satisfy themselves that they were intact. Inspection of boxes occupied nearly an hour and counting of votes commenced at 9 A.M. Ten tables had been arranged in a row for the purpose of counting, with three clerks sitting on either side and a checking officer at one end of each table. The table of the Returning Officer (R.W. 3) was placed at the eastern end of the row in such a position that he could see what was going on at the other tables. Seats had also been arranged for the candidates and their counting agents on one side of the table leaving only sufficient space for a person to pass through. The ballot boxes had been arranged according to the list of validly nominated candidates which was in the alphabetical order. Ten boxes were brought and placed one on each table. R.W. 3 opened these boxes one after the other. Before opening each box he satisfied himself about the marks and seals thereon and showed them to the candidates and their agents. After the boxes were opened and the contents emptied, the empty boxes were shown so as to satisfy the candidates and their agents that the symbols both inside and outside were the same. In this manner, the ten boxes were opened one after the other. The same procedure was followed when fresh boxes were brought. Each table had an account, like Ex. III of the ballot papers issued to each polling booth by reference to which checking could be done. The accuracy of the counting by one group of clerks was verified by the checking officer with the aid of another group of clerks. As soon as the ballot papers in one box were counted and checked the result was passed on to him and it was announced. As and when the counting of the ballot papers in all the boxes of each candidate was completed, the number of votes polled by him was immediately announced and finally he announced the result of the election.

17. If this evidence of R.W. 3 is to be believed there was no non-compliance with the provisions of Rule 46. But a different version was given by P.Ws. 1 and 11. There is also the evidence of the petitioner (P.W. 12) who stated that he was in the Victoria Public Hall for nearly two hours from 9 A.M., while the counting of votes was in progress. Naturally he could not speak to what happened before he went there. But he stated that there was utter confusion with one clerk crying for a box and before it was brought another calling out similarly. The boxes were opened by the clerks. Nobody was allowed to see the seals and during the two hours he remained there he was unable to find whose ballot boxes were being opened or whose votes were being counted. According to P.Ws. 1 and 11, they were neither asked nor permitted to inspect the ballot boxes and satisfy themselves that the seals etc. were intact and counting was commenced exactly at 8 A.M. Though P.W. 12 deposed that the ballot boxes were opened by the clerks, these witnesses stated that they were opened by the peons and not by the Returning Officer. The result of the counting of votes were also not announced till they left the place. It may be mentioned that the counting of votes polled by all the candidates was finished only at about 2-40 P.M. and these witnesses left the hall sometime before.

18. Thus the evidence of the witnesses is conflicting. Before dealing with the evidence, it is necessary to state briefly the relevant provisions of Rule 46, which lays down the procedure to be followed in the counting of votes. After complying with sub-clauses (i) and (ii) of Rule 46(1), the Returning Officer, has, under sub-clause (iii) of the same Rule to "allow the candidates and their election agents and counting agents present at the counting an opportunity to inspect the ballot boxes and their seals for satisfying themselves that they were in order". Under sub-clause (iv) the Returning Officer has to "satisfy himself that none of the boxes has, in fact been tampered with" and it lays down the procedure to be followed in case it is found that any of the boxes had been tampered with, destroyed or lost. After the steps mentioned in sub-clauses (i), (ii), (iii) and (iv) are gone through and after the Returning Officer is satisfied that all the ballot boxes have been received and are in order, the process of counting of votes is to begin. Sub-clause (vi) provides that "as each ballot box is opened for counting the mark or marks made on the box or in any of its component parts or attachments and the label containing the symbol affixed inside the box shall be checked. Thereafter the ballot papers shall be taken out from the box and arranged in convenient bundles and counted with the aid of persons appointed to assist in the counting of votes". The words "as each ballot box is opened for counting" were substituted by a subsequent amendment for the words "one ballot box shall be opened at a time" in the rule as originally framed. In regard to this sub-clause, it is necessary to observe that it does not provide that the candidates and their agents should be allowed an opportunity for checking at this stage as in sub-clause (iii). Under sub-clause (vii) the candidates and their agents have to be allowed "reasonable opportunity to inspect all ballot papers which in the opinion of the Returning Officer are liable to be rejected but shall not allow them to handle those or any of the ballot papers". The opportunity to inspect is restricted to such of the ballot papers, as in the

opinion of the Returning Officer, are liable to be rejected. The candidates and their agents have no right to claim inspection of all the ballot papers. After the completion of the counting of votes, the Returning Officer shall under rule 48 "forthwith declare the candidate or candidates to whom the largest number of valid votes has been given to be elected".

19. The evidence of the petitioner, P. W. 12 does not and cannot throw any light on what happened before his arrival. According to P. W. 11, who was the counting agent, he was not asked to inspect the ballot boxes nor did he ask for permission to do so. But P. W. 1, would say that they were not allowed to inspect the boxes in order to satisfy themselves that the seals etc. were intact and that they had not been tampered with. If their evidence is to be believed this was not confined to the Petitioner's boxes alone but applied to the boxes of all the candidates. In this connection reference has to be made to Ex. C. a written protest made by P. W. 1 to the Returning Officer at 1-20 P.M. as noted thereon by the latter. The complaint that he made was that "the seals of the boxes or the ballot papers are not examined by the Returning Officer nor are they opened one by one by him. This has been entrusted to the clerks ... Neither the candidate nor his agents are given the opportunity to inspect the seals or the ballot papers". It is not clear from this whether the failure to give an opportunity to inspect relates to failure at the commencement before the actual counting began or failure during the process of counting, when each box was brought and opened. The Returning Officer then and there rejected this protest by his order, Ex. VII which is as follows:—"The ballot boxes were given for inspection by the candidates, their election agents and their counting agents who were present at 8 A.M. this morning. They took about one hour to inspect the boxes and after they told me that I could proceed with the counting of votes, I allowed the first ten boxes to be brought on to the ten tables and showed everyone of the boxes to the candidates or their agents present. They were opened, one after another. As each table has completed the counting of votes in a ballot box, another box is brought and is given for inspection by the candidates and their agents. The procedure followed is strictly in accordance with the rules. The ballot boxes have been examined by me personally on the 17th when all the boxes were arranged according to each candidate. They were inspected by me again on the 18th as each is brought for counting. The statement that they have not been examined by me is not correct."

20. The objection that inspection of the ballot boxes was not allowed at the commencement of counting of votes is clearly refuted by this order. It is not an after-thought, as this order was made in the presence of other candidates and their agents. Even if opportunity to inspect the boxes was not given during the process of counting, i.e., when each box was brought and opened, that cannot be regarded as an irregularity, because as mentioned earlier, rule 46(1) (vi) does not contemplate such inspection at that stage. Further there are exhibits II, V, and VI. Ex. II is the account in form No. 14 as regards the number of votes of each candidate found in each of the 139 boxes arranged in the order of the polling booths The total number of votes polled by each candidate and the number of rejected ballot papers are also given. Ex. V is the account in form No. 15 of the rejected ballot papers with the reasons for such rejection. Ex. VI is the final return made by R. W. 3 in form No. 16. It gives the number of votes polled by each candidate, the number of invalid and tendered votes and contains the declaration that the first respondent was duly elected. These elaborate accounts justify the inference that there was no irregularity in regard to the counting of votes It may be that the counting was carried on with some speed. But there is no reason to think that the rules were all disregarded. Even assuming that the result of counting of the ballot papers in each box or all the ballot papers of each candidate was not announced then and there as deposed to by P. W. 12, that cannot be a ground for complaint as rule 46 does not contemplate an announcement at each such stage.

21. There is reason to think that P. Ws. 1 and 11 were under some misapprehension. Both stated that they were not allowed to inspect the ballot papers. The same complaint is found in Ex. C to which reference has already been made. Similarly in the list of corrupt practices under the heading 'Counting Day', the same objection is put forward in paragraph 2. As pointed out earlier a candidate or his agent has no right to claim inspection of the ballot papers except such of them "as the Returning Officer finds are liable to be rejected". Further in paragraph 1 objection is taken that the Returning Officer has no authority "to delegate the powers of counting to a batch of 90 clerks as has been done by the Returning Officer in this election". It is open to the Returning Officer to appoint as many persons as he considers necessary to assist him in counting the votes (see Rule 45) and this objection was given up by the petitioner's learned advocate.

22. During the counting of votes fifteen persons, consisting of candidates and their agents, were present. But there was no protest by any of them. None among them has come forward to say that there was disregard of the rules as P. Ws. 1 and 11 tried to make out It is not as if such wholesale disregard of the rules is a matter which affects the petitioner alone. Besides the petitioner and the 1st respondent, there were seven other candidates, and it must have affected them equally but none of them has come forward to give evidence.

23. Assuming that there was no compliance with the rules what follows? Mere non-compliance with the rules made under the Act is not enough. Under section 100(2) (c), it must also be proved that by reason of such non-compliance "the result of the election has been materially affected". It is necessary to emphasise that petitioner cannot succeed unless this fact is established by evidence. But no attempt was made to prove that as a result of non-compliance with the rules the result of the election was affected materially or even to any extent. This defect is fatal.

We therefore, find Issue No. 8 against the petitioner.

24. *Issue No.* 6.—It is unnecessary to consider this issue.

25. *Issue Nos.* 1 *to* 5.—These issues were decided by our order dated 24th November 1952 which is as follows:—

"*Issues* 1 *to* 3.—Arguments were heard on these issues which relate to the maintainability of the petition. A few dates are material for their determination. The date of publication of the return of election expenses in this case under rule 113 of the Representation of the People (Conduct of Elections and Election Petitions) rules, 1951 was 1st April 1952. The last date for presenting an election petition under rule 119 was 15th April 1952. This election petition is dated 14th April 1952 and it was received by the Election Commission on the 16th. It is seen from the further statement filed by the petitioner that a receipt for deposit of Rs. 1,000 as security for costs was not sent along with the election petition but it was sent on the 15th of April. It is likely that it was received by the Election Commission on the 16th. On 17th June, the Election Commission sent a letter inviting the attention of the petitioner to the fact that the petition was not accompanied by a list duly signed and verified in accordance with the provisions of law and asked him to show cause, within a period of 15 days from the date of receipt of the letter, why his petition should not be dismissed under section 85 of the Representation of the People Act, 1951. The petitioner in his reply dated 30th June stated that the petition filed by him "contained all the necessary materials as required under Section 83 (1) and (2) and as such, I thought it would be redundant to restate the same contents of the petition in another list and submit the same. Even if it were a technical omission, it may kindly be condoned. However, to remove all doubts in the matter I am enclosing herewith a list signed and verified by me." Finally he stated that "under these circumstances, I request that the omission in not sending a list may be condoned."

2. The question whether the petition was presented in time depends on the construction of section 81 of Representation of the People Act 1951 (XLIII of 1951). Sub-section (1) provides for the presentation of the petition to the Election Commission within the time specified. Sub-section (2) runs as follows:— "An election petition shall be deemed to have been presented to the Election Commission—

(a) when it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf—

(i) by the person making the petition; or

(ii) by a person authorised in writing in this behalf by the person making the petition; or

(b) when it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed."

3. For the respondents it is contended that when a petition is sent by registered post, the date when it is delivered to the Secretary to the Election Commission or the officer appointed for that purpose, is the date of presentation. The contention for the petitioner on the other hand is that when a petition is sent by registered post, the date of presentation is the date when it is sent and not the date on which it is received by the Election Commission. In our opinion, the proper

construction of section 81 (2) (b) is the one contended for by the petitioner's learned Counsel. A petition may either be presented by the person making the petition or by a person authorised by him in writing in this behalf or by sending it by registered post. Section 81 (2) (a) deals with presentation by the petitioner himself or by the person authorised by him and so far as that is concerned there can be no doubt as regards the date. Sub-section (2) (b) of section 81 deals with the other mode of presentation, *viz.* by registered post. Section 81 (2) and clause (b) read together would run as follows:—"an election petition shall be deemed to have been presented to Election Commission when it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed." If the intention was that the date of presentation should be the date of receipt, then one would expect a different language such as "If sent by registered post, when it is delivered to the Secretary to the Commission". The emphasis is not on the date of receipt but on the date of sending by registered post, when it is followed by receipt by the appropriate officer. If our construction of section 81 (2) (b) is adopted, the date on which it is deemed to have been presented to the Election Commission is the date on which it is sent. As the petition was sent on the 14th April the petition was presented within the time prescribed.

4. The treasury receipt for the deposit of security for costs was also sent by post on the 15th and was therefore within time. No doubt section 117 requires that the "petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him". To the extent that the receipt was not sent along with the petition on the 14th, there was not a strict compliance with this provision. But when the petition and the receipt had been sent by registered post within the prescribed time and were received by the Election Commission, it will be mere technicality to say that because one was not enclosed in the other there was no conformity with the provisions of the Act.

5. Further, even if there was any delay, it was condoned by the Election Commission by its order dated 8th July 1952 which states: "the delay of one day in the presentation of the petition is condoned and the petition is admitted."

6. Since we have come to the conclusion that there was no delay in the presentation of the petition, the further question raised by Sri V. T. Rangaswami Iyengar for the first respondent. *viz.* that the order of condonation is invalid for want of notice to the respondents does not arise for consideration. It may be remarked that there is no statutory requirement imposing a duty on the Election Commission to issue a notice before exercising the discretion vested in it to condone any delay, under the proviso to section 85. Further, how far the analogy of the rule applicable to ordinary Courts of Law under certain circumstances in regard to the necessity for issuing a notice could be held applicable to a Statutory Body like the Election Commission in the exercise of its discretion under the Proviso to section 85. may also have to be considered. We express no opinion on these questions.

7. *Issue* 4.—This issue as it stands is somewhat inaccurate because the Election Commission did not call for a list. What actually happened has been stated above. In answer to the letter of the Election Commission pointing out that the petitioner had omitted to append a list of particulars to the election petition as required by section 83 (2) and calling upon him to show cause why the petition should not be dismissed. A list was sent on 30th June. This, however, was long after the time prescribed for filing the election petition. Section 85 empowers the Election Commission to dismiss a petition if the provisions of section 81, section 83, or section 117 are not complied with. But there is a proviso to this section which it is necessary to set out in full: It runs as follows:—"Provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure." In this connection section 90 (4) has also to be referred to and it provides that: "Notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with provisions of section 81, section 83 or section 117".

8. It was contended by Sri D. Narasaraju who appeared for the petitioner, that the Election Commission has under the proviso to section 85, power of condonation in respect of non-compliance with all the three sections, namely sections 81, 83 and 117. According to him the order of the Election Commission dated 8th July 1952 covers also the failure to append a list of particulars as required by section 83 (2). It has to be observed that the list was actually sent only on the 30th June 1952. The Election Commission's order speaks only of the condonation

of a day's delay. If this delay had also been condoned the delay was not one day but nearly two and a half months. Further the order does not specifically refer to this matter. It is significant that the proviso speaks only of failure to present the petition within the period prescribed therefor. If it had been the intention of the Legislature that the discretionary power should extend to section 83 also, the language would have been more specific.

9. It is no doubt true that a petition to be validly presented must satisfy the requirements of section 81 regarding time and manner of presentation, section 83 regarding contents and section 117 in regard to deposit of security for costs. A petition to be valid, must satisfy all these requirements and if it does not, the Election Commission has power under section 85 to dismiss it. But it does not follow as contended for the petitioner that the ambit of the proviso must be co-extensive with the provision in the section. There is nothing illogical or unsound in the proviso being confined to one particular matter namely delay in the matter of presentation. The proviso to section 81 deals only with failure to present the petition within the period prescribed therefor. We are, therefore, of opinion that the power of the Election Commission to condone is confined to the delay in presentation and does not extend to failure to comply with the other requirements. Nor does the order of the Election Commission purport to deal with the failure to comply with section 83 (2) in regard to list of particulars.

10. We are, however, not prepared to agree with the respondents that this petition is liable to be dismissed for failure to comply with the provisions of section 83. The respondents rely on the decision in Doabia's Indian Election Cases (1935 to 1950)—Volume II, Calcutta North Mohammadan Urban Constituency (page 322) was relied on. In that case it was contended that the failure to attach a list of corrupt and illegal practices to the petition as originally filed is a defect which entails its dismissal. In that case the petition did contain a list. But the Governor apparently felt that the list did not satisfy the rules then in force and called upon the petitioner to furnish a list with full particulars. Accordingly a further list was also filed. When the matter came before the Commissioners, they examined the allegations in the petition and the list appended thereto and come to the conclusion that they did not comply with the provisions of rules 27(1) and (2) of the Bengal Election Rules 1936, which more or less correspond to section 83 of the Act. The petition was therefore dismissed. In doing so they observed: "In our view of the law it would not be competent for us to allow the petitioner to amend his original petition by including the details furnished by him on the 29th June 1937, long after the expiry of the prescribed period of limitation". The facts in the present case, are, however, different. It is no doubt true that the particulars were not furnished in the form of a list to the original petition. But certain allegations had been made and the list which the petitioner subsequently sent contains only those allegations arranged in proper form. No new allegations have been made. How far those allegations amount to allegations of corrupt and illegal practices is a matter which has not been argued and we are not dealing with it at present. All that could be said is that these allegations were not put in the form of a separate list. To dismiss the petition on the ground that these allegations do not appear in the form of a list, though they do find a place in the petition, would be a too narrow and technical view of Section 83(2), insisting on the form rather on the substance. We do not mean to say that a failure to comply with the requirements of Section 83(2) which is wilful and deliberate should be excused. But the circumstances of this case are peculiar. The list consequently filed sets forth only the same allegations as are found in the petition regarding corrupt and illegal practices and the petitioner seems to have been under the *bona fide* belief that a separate list was not necessary. We, therefore, hold that the petition is not liable to be dismissed on this ground.

(11) Issue 4 does not call for any finding.

(12) Issue 5. We find on this issue that the petition is not barred by limitation."

26. *Issue No.* 9.—We find that the election is not liable to be set aside.

27. In the result the petition is dismissed with costs of respondents 1 and 2 which we fix at Rs. 500 each. Costs will carry interest at three per cent. per annum from this date.

Dictated to the Shorthand writer and pronounced in open Court this the 24th day of December 1952.

(Sd.) K. B. VENKATACHALA AYYAR.

(Sd.) SYED IMAMUDDIN.

(Sd.) K. CHANDRASEKHARAN.

ANNEXURE I

In this application Sri T. Prakasam the petitioner in election petition No. 144/52 applies to have the seven persons named therein joined as parties to the election petition.

2. The Applicant was one of the candidates for election to the Legislative Assembly of this State from the Harbour Constituency. He was defeated and the first respondent, Sri Dr. U. Krishna Rao was the successful candidate. Election petition No. 144/52 has been filed by Sri T. Prakasam for a declaration that the election is void on grounds which, it is not necessary to state in detail for the present purpose. To his petition he added only two persons as respondents, namely, Sri Dr. U. Krishna Rao the successful candidate and Sri C. Narasimham who was the Returning Officer. In addition to the petitioner and the first respondent, there were seven other candidates who were duly nominated but they were not made parties. The respondents in their statements among other contentions have raised the objection that the petition is not maintainable by reason of the non-joinder of the remaining duly nominated candidates as required by section 82 of the Representation of the People Act (Act XLIII of 1951)—(hereafter referred to as the Act). The petitioner has, therefore, filed this application for the addition of the remaining seven duly nominated candidates as parties to the election petition It is opposed by respondents 1 and 2. Of the seven persons who are sought to be added as parties, Sri G. M. Azizuddin has filed a counter opposing the application while another Sri Parasuram Naicker by his Counsel stated that he was not opposing the application. The rest did not appear either in person or by Counsel.

3. Section 82 of the Act provides that "a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated". From this provision it is clear that the petitioner should have joined these seven persons as parties to the election petition. The reason alleged for the omission to join them as parties is that it was overlooked by "inadvertance and was due to mere accident".

4. For the petitioner it is argued that by virtue of section 90(2) of the Act, the provisions of the Civil Procedure Code are made applicable to the trial of election petitions and this Tribunal has, therefore, power under Order 1, Rule 10 of the Civil Procedure Code to add these persons as parties to the election petition.

5. The contentions for the respondents may be briefly summarised as follows:— Under section 80 of the Act no election could be called in question "except by an election petition presented in accordance with the provisions of this Part". (Part VI). Section 82 is one of the provisions and the joinder of all the duly nominated candidates, was, therefore, imperative. Reference was also made to the provisions in the Act and the Rules made thereunder which fix the time within which the election petition should be filed. Relying on these provisions, it is argued that in this case there is no valid election petition presented in accordance with the provisions of Part VI of the Act and that the defect cannot be remedied. As regards the applicability of the Civil Procedure Code it is argued that section 90(2) restricts its applicability to the stage of trial; in other words only such of the provisions of the Code as relate to the actual trial are alone made applicable.

6. The real question that has to be decided is whether this Tribunal has power to allow the joinder of persons who ought to have been, but who were not joined as parties to the petition. There is no specific provision dealing with this question either in the Act or in the rules framed thereunder. No doubt, section 90(1) provides that within 14 days after the publication of the notification in the official Gazette prescribed thereunder, any candidate could be joined as a party. But that provision, it appears to us, deals with a different case where a candidate himself comes forward with an application to add him as a party. In such a case the application has to be made within the time specified, and in addition he has also to give security under section 119 of the Act. But what we are concerned with is, how far is it permissible for this Tribunal to allow a defect due to non-joinder in the original petition to be remedied by the addition of new parties.

7. If Order 1, Rule 10 of the Civil Procedure Code is applicable to the trial of election petitions, it must follow that it is competent for this Tribunal to allow the joinder of new parties where such addition is necessary. But Learned Counsel for respondents relied on section 90(2) and contended that Order 1, Rule 10 of the Civil Procedure Code is not applicable. Section 90(2) provides "Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be in accordance with the Procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908), to the trial of suits". Emphasis was laid on the word "trial" and it was said that only such

of the provisions as relate to the actual trial such as framing of issues, examining of witnesses and recording of evidence etc., are applicable. In our opinion, this places a too narrow and restricted meaning on the word trial. This expression has a limited as well as a wider meaning. When used in a wider sense it includes all steps in a suit or Proceeding from its inception till the final judgment. In Part VI of the Act the expression 'trial' occurs in several places and the sense in which it has been used has to be gathered from the context in which it appears. In our opinion, this expression in section 90(2) is used in the wider sense indicated above. There is no provision either in the Act or in the Rules framed thereunder which could be said to deal with a case like the present. There is, therefore, no reason to hold that Order 1, Rule 10 of the Civil Procedure Code is not applicable to the Proceedings before an Election Tribunal. For the respondents, reliance was placed on the case reported in Hammond's Election Cases—page 181 (Bombay City Case). That case which related to an election to the Bombay Legislative Council was decided with reference to the rules framed under the Government of India Act, 1919. It is seen from the report that according to the rules then in force, it was only in cases in which the petitioner claimed that he was duly elected—in addition to claiming that the election of the successful candidate was void—that it was necessary to add all the duly nominated candidates as parties to the petition. The Commissioners held that under the Rules they had no power to permit the joinder of new parties. It may be observed that as far as could be gathered from the report there was no provision in the rules corresponding to section 82 of the Act. Under this section all the duly nominated candidates should be made parties to an election petition irrespective of the nature of the relief claimed, that is whether the relief claimed is confined to a declaration of the invalidity of the election of the successful candidate or whether it includes also a further declaration that the petitioner has been duly elected. The chief consideration which seems to have weighed with the Commissioners in that case in coming to the conclusion that they did, would appear to be that the purpose for which new parties were to be impleaded was to give them an opportunity to recriminate and as the rules prescribed the time and conditions for the exercise of that right and they could not be satisfied their joinder was not permissible. As regards the Shaharanpur case (Hammond's Election Cases—page 621) which was also relied on, it is sufficient to say that in view of the provision in section 83(3) of the Act, the reasoning on which that judgment is based no longer holds good.

8. Section 85 of the Act was also referred to by Learned Counsel for the respondents. But that section far from supporting his contention seems to lend support to the view that we are inclined to take. It empowers the Election Commission to dismiss an election petition summarily if it did not comply with the provisions of sections 81 (presentation of petition), 83 (contents of petition) and 117 (deposit of security). Section 90(4) confers similar power on the Election Tribunal also. If the provision in section 82 as regards the joinder of all the duly nominated candidates is so imperative as to constitute its non-observance a ground for dismissal, it is reasonable to expect that that section also would have been included in sections 85 and 90(4) It is not a far fetched inference to conclude that the Legislature intended that the question of non-joinder should be dealt with by the Tribunal under the appropriate rules of the Civil Procedure Code.

9. The argument based on the provisions in the Act dealing with the form of petition, the time within which it should be filed etc., though relevant when considering whether in a particular case the power of adding parties should be exercised, does not negative the existence of the power.

10. Under these circumstances we are unable to accept the argument for the respondents that we have no power to allow the joinder of the persons mentioned in this application as parties to the election petition.

11. Turning to the merits, in the affidavit filed in support of this application the reason alleged for the omission to add all the duly nominated candidates is that "the provision of section 82 was overlooked by inadvertance and was due to mere accident". It is impossible to think that the petitioner or his legal adviser would have deliberately omitted to add the necessary parties in the face of the clear provisions contained in section 82. The explanation, therefore, appears to us to be acceptable though the petitioner cannot be absolved of negligence. In the result the petition is allowed. The petitioner will pay the costs of respondents 1 and 2, Rs. 35 each.

After we reserved orders, a request was made by Mr. Krishnamoorthi the Learned Counsel for petitioner for permission to refer to some authorities and for further arguments. Such a request made at a late stage cannot be granted and permission was, therefore, refused.

ANNEXURE II

In the election petition filed by the applicant allegations both as to corrupt practices and non-compliance of rules etc., bringing the petition under section 100(1) as well as section 100(2) of the Representation of the People (XLIII of 1951), have been made. But the prayer is only to declare the whole election void which comes under section 100(1). There is no prayer to declare the election of respondent No. 1 void as contemplated under section 100(2). The petitioner has filed the present application seeking to add the prayer declaring the election of the first respondent void. It is urged on behalf of the applicant that the prayer already contained in the petition involves the prayer now sought to be added. But it was absolutely necessary for him to have specifically prayed for this relief also if the applicant really wanted to have the election of the returned candidate set aside

2. However, inasmuch as no new case is sought to be set up now and no allegations inconsistent with the original case are sought to be added, it seems to us that there could be no serious objection to permit the applicant to add this prayer, based on the allegations already made.

3. It may be mentioned here, that inasmuch as evidence as to corrupt practices has already been let in by the applicant, no fresh evidence on this point could be allowed to be adduced. The learned Counsel for the petitioner agrees to this.

4. There is no doubt that as contended by the respondents, this application is a belated one. If the applicant had been diligent he would have filed this application much earlier. Under the circumstances, this case calls for imposition of terms on the petitioner.

5. This application is allowed. Petitioner will pay cost to respondents 1 and 2 which we fix at Rs. 35 each.

[No. 19/144/52-Elec. III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

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